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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/817,788	03/26/2001	Darrell L. Sparks	2303-1-015N	7795

7590 10/15/2003

KLAUBER & JACKSON
411 Hackensack Avenue
Hackensack, NJ 07601

EXAMINER

AHMED, SHEEBA

ART UNIT	PAPER NUMBER
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1773

10

DATE MAILED: 10/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/817,788

Applicant(s)

SPARKS ET AL.

Examiner

Sheeba Ahmed

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
 2. ☐ The proposed amendment(s) will not be entered because:
 (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ they raise the issue of new matter (see Note below);
 (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
 4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached sheet.
 6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
 7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.Claim(s) objected to: None.Claim(s) rejected: 26-29, 31-53, and 55.Claim(s) withdrawn from consideration: None.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
 9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
 10. ☒ Other: See attached sheet.

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1. The Amendment After Final submitted on September 15, 2003 (Paper No. 9) has been entered in the above-identified application however such an amendment does not place the application in condition for allowance. **Claims 26-29, 31-53, and 55 are now pending.**

Applicants traverse the rejection of claim 26-29, 31-53 and 55 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement and submit that the terms "non-porous" and "hard, non-elastomeric" are inherent in the manufacture of the product according to the invention given that there is no moisture present that would result in any porosity of the resulting product and that all acrylics such as the ones claimed are inherently hard and non-elastomeric. However, the Examiner disagrees with the Applicants. First, there is no evidence that the claimed product is inherently "non-porous" and "hard, non-elastomeric" and the independent claims do not state that the particles are acrylic particles. Second, the Applicants are reminded that any negative limitation or exclusionary proviso must have basis in the original disclosure. See *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983), *aff'd mem.*, 738 F.2d 453 (Fed. Cir. 1984). The mere absence of a positive recitation is not basis for an exclusion.

Applicants further traverse the rejection of claims 26-29, 31-47, 52, 53, and 55 under 35 U.S.C. 103(a) as being unpatentable over Trabert et al. (US 5,318,737) and submit that the composite product taught by Trabert has neither the matte (frosted glass) appearance of the invention nor the finger print resistance. Specifically, the Applicants state that the product taught by Trabert is a transparent product. However,

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the Examiner has been unable to find any reference in Trabert that specifically states that their final product is transparent. Furthermore, the Examiner has taken the position that the plastic composite made by feedblock coextrusion of a molten acrylic capstock overlying and bonded to an underlying structural plastic ply, as disclosed by Trabert, must have claimed finish given that the chemical composition and the method of making the plastic composite as disclosed by Trabert et al. and the composite of the claimed invention are identical.

Applicants further state that the combination of Smith (US 3,174,107) with Trabert does not render the claims obvious given that the mineral particles taught by Smith would alter the final appearance of the claimed product such that it is white colored and not frosted. However, the Examiner would like to point out that Smith has been relied upon as evidence to show that filler materials such as natural ground barium sulfate or calcium carbonate having a large particle size provide a surface with a dull finish and has not been used in combination with Trabert.

Hence, the above rejections are maintained.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheeba Ahmed whose telephone number is (703)305-0594. The examiner can normally be reached on Mondays and Thursdays from 8am-6pm.

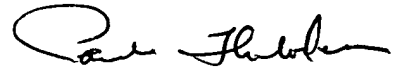
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau can be reached on (703)308-2367. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)306-5665.



Sheeba Ahmed
October 14, 2003



Paul Thibodeau
Supervisory Patent Examiner
Technology Center 1700